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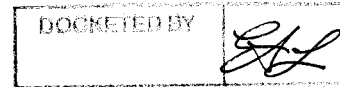
BEFORE THE ARIZONA CORPORATION COMMISSION

BOB STUMP
Chairman
GARY PIERCE
Commissioner
BRENDA BURNS
Commissioner
BOB BURNS
Commissioner
SUSAN BITTER SMITH
Commissioner

Arizona Corporation Commission

DOCKETED

OCT 25 2013



IN THE MATTER OF THE JOINT
APPLICATION OF TNCI OPERATING
COMPANY LLC AND PAC-WEST
TELECOMM, INC. (DEBTOR-IN-
POSSESSION) FOR APPROVAL OF THE
TRANSFER OF CUSTOMER BASE AND
ASSETS.

DOCKET NOS. T-20882A-13-0262

T-03693A-13-0262

DECISION NO. 74153

ORDER

Open Meeting
October 16 and 17, 2013
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On August 1, 2013, TNCI Operating Company LLC ("TNCI") and Pac-West Telecomm, Inc. (Debtor-In-Possession) ("Pac-West") (together, "Applicants"), filed a request for approval, to the extent required, from the Commission for TNCI to acquire the customers (including the customers' contracts) and certain assets¹ of Pac-West through a sale pursuant to ...

¹ Applicants note that Pac-West's physical assets located in Arizona that are used or useful in the provision of intrastate telecommunications service include switches, routers, modems and other equipment and do not include copper or fiber transmission facilities. To the extent this transaction occurs after September 13, 2013, the Applicants note that approval is not required for the acquisition of assets pursuant to newly enacted A.R.S. 0 40-285(F) as Pac-West's retail telecommunications services are classified as competitive.

1 Section 363 of the United States Bankruptcy Code (the “Transaction”).² As a result of the
2 Transaction, Pac-West’s customers will be transferred to TNCI, which will become the service
3 provider for those customers. The Applicants assert that the Transaction will be virtually
4 transparent to customers of Pac-West in terms of the services that those customers receive and the
5 rates and terms of those services. On August 27, 2013, the Applicants filed a Notice of Filing
6 Affidavit of Publication of Public Notice. The Notice of the Application was published on August
7 19, 2013, in the Arizona Republic.

8 INTRODUCTION AND REQUEST FOR EXPEDITED TREATMENT

9 2. On March 28, 2013, UPH Holdings, Inc. (“UPH”) and its subsidiaries including
10 Pac-West (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title
11 11, U.S.C. §§ 101 et seq., as amended, in the United States Bankruptcy Court for the Western
12 District of Texas, Austin Division (the “Bankruptcy Court”). Throughout the proceeding, Pac-
13 West has continued to operate its business and provide telecommunications services to its
14 customers. After an auction process, the Debtors and TNCI entered into an Asset Purchase
15 Agreement, dated as of July 3, 2013 (the “Agreement”), for TNCI to acquire certain of the assets
16 of Debtors. The Bankruptcy Court approved the Agreement and Transaction on July 22, 2013. The
17 Agreement and the Court’s Sale Order provides for an Initial Closing following receipt of
18 approvals from the Federal Communications Commission (“FCC”), and for additional closings at
19 approximately 45-day intervals until the Final Closing, which will occur on or before the 180th
20 day following the Initial Closing. At each closing, Pac-West will assign to TNCI those assets and
21 customers for which applicable state governmental approvals have been obtained. Given the
22 Chapter 11 status of Pac-West, Applicants submit that the public interest would be served by the
23 prompt transition of the business to TNCI as quickly as possible, and therefore urge that the
24 Commission promptly approve the requested transfer to permit the transfer of the Arizona
25 customers and assets at the earliest possible time.

26 ...

27 _____
28 ² In re Pac-West Telecomm, Inc., Chapter 11, Case No. 13-10571, US. Bankr. Court (W.D. Texas) (Jointly Administered under Case No. 13-10570).

1 **DESCRIPTION OF THE APPLICANTS**

2 **A. TNCI Operating Company LLC**

3 3. TNCI is a Delaware limited liability company with principal offices located at 114
4 E. Haley Street, Suite A, Santa Barbara, California 93101. TNCI is a wholly owned subsidiary of
5 TNCI Holdings LLC ("TNCI Holdings"), a Delaware limited liability company that is wholly
6 owned by investment funds managed by Garrison Investment Group (collectively, the "Garrison
7 Group"), a leading middle market investor.

8 4. TNCI is in the process of acquiring substantially all of the assets of Trans National
9 Communications International, Inc. (the "TNCII Transaction").³ As a result of the closings of the
10 TNCII Transaction that have occurred to date, TNCI currently provides interstate and international
11 telecommunications throughout the United States and intrastate telecommunications services in 25
12 states that have already issued their approvals. In addition to the TNCII Transfer Application,
13 TNCI has filed an Application with the Commission for a certificate of convenience and necessity
14 to provide resold and facilities-based local exchange, long distance, private line and switched
15 access telecommunications services, (the "Certification Application")⁴ and TNCI urges that the
16 Commission expedite its consideration of the Certificate Application, along with this Application,
17 to enable the Transaction to be completed as soon as possible. TNCI also holds authority from the
18 FCC to provide interstate and international telecommunications services.

19 5. TNCI is managed by individuals with significant experience in the
20 telecommunications industry and therefore has the technical, operational and managerial
21 qualifications to acquire the assets and customers of Pac-West. Biographies of the key personnel
22 of TNCI were attached as Exhibit E to the Certification Application. Further, TNCI has been
23 funded by Garrison Group and *pro forma* financial statements were provided to the Commission's
24 Staff as part of the Certification Application. For all these reasons, TNCI submits that it has the
25 managerial, technical and financial qualifications to provide high quality telecommunications
26 services to the customers of Pac-West.

27
28 ³ See Docket No. T-20882A-13-0114.

⁴ See Docket No. T-20882A-13-0108.

B. Pac-West Telecomm, Inc. (Debtor-In-Possession)

6. Pac-West is a California corporation and wholly owned subsidiary of UPH, a Delaware corporation. Pac-West and UPH have a principal business address of 6500 River Place Blvd., Building 2, Suite 200, Austin, Texas 78730. Pac-West offers origination and termination services, managed modem services, co-location, and transport primarily on a wholesale basis to other telecommunications carriers (Pac-West also offers retail T-1 service to a limited number of business/enterprise customers in California and Texas).

7. In Arizona, Pac-West is authorized to provide resold and facilities-based local exchange and interexchange telecommunications services pursuant to Decision No. 61903 issued by the Commission in Docket No. T-03693A-99-0032 on August 27, 1999. Pac-West also holds domestic and international Section 214 authorizations from the FCC, which allow Pac-West to offer interstate and international telecommunications services.

DESCRIPTION OF THE TRANSACTION

8. Pursuant to the Agreement, TNCI will acquire certain of the assets of Pac-West, including Pac-West's customer accounts, customer contracts and telecommunications equipment. The Bankruptcy Court approved the Agreement and the Transaction on July 22, 2013. The Agreement and Sale Order provides for an Initial Closing following receipt of approvals from the FCC, and for additional closings at approximately 45-day intervals until the Final Closing, which will occur no later than the 180th day following the Initial Closing. Pursuant to the Agreement and Sale Order, at each closing Pac-West will assign to TNCI those customers accounts and contracts and assets for which applicable governmental approvals have been obtained. In the interest of assuring seamless and uninterrupted service, all of the assigned customers will continue to receive service from TNCI under the same rates, terms and conditions of services as currently provided by Pac-West. Pac-West provides services only to wholesale carrier customers in Arizona. Its contracts with those customers will be assigned to TNCI without any changes in their rates, terms or conditions. Future changes in the rates, terms and conditions of service to the affected customers will be undertaken pursuant to customer contracts and the applicable federal and state notice and tariff requirements.

PUBLIC INTEREST CONSIDERATIONS

9. Applicants respectfully submit that the proposed Transaction serves the public interest. The Transaction will result in the assignment of Pac-West customers to a financially stable company that will continue to provide telecommunications services to such assigned customers without interruption. TNCI's operations will be overseen by a well-qualified management team with substantial telecommunications experience and technical expertise. In addition, the proposed Transaction is structured to assure an orderly transition of customers from Pac-West to TNCI. In accordance with the terms of their service contracts and the applicable rules and procedures of the FCC and state(s), including this Commission, customers will be notified of the proposed transaction and the change in their telecommunications provider from Pac-West to TNCI. A sample of the form of notice that will be sent to Pac-West's Arizona customers at least 30 days prior to their transfer is provided as Exhibit A attached to the Application.

REQUEST FOR WAIVER OF SLAMMING AND CRAMMING RULES

10. Customers will be notified of the proposed Transaction and the change in their telecommunications provider from Pac- West to TNCI. Applicants request, to the extent necessary, that the Commission grant a waiver of A.A.C. R14-2-1904 *et seq.* and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the sale or transfer of customer bases.

11. Applicants also request that the Commission, to the extent necessary, grant a waiver of A.A.C. R14-2-2001-2007 (the "Cramming Rules"), which, among other things, require a telecommunications company to obtain authorization from a customer when ordering telecommunications products and services in order to prevent unauthorized carrier charges on their bill. The applicants state that TNCI is in the process of purchasing Pac-West's assets, including its customers, and the affected customers will receive the same services as they currently receive under the same rates, terms and conditions. The Applicants do not believe that the Cramming Rules apply to this proceeding because Pac-West's customers are being transferred to TNCI. No new products and services are being ordered from TNCI and no new charges will be assessed as a result of the Transaction.

12. To the extent that the Cramming Rules apply to this Transaction, the Applicants submit that it is in the public interest to grant a waiver of the rules in this case because current Pac-West customers will receive at least 30 days' notice of the Transaction as required by the FCC's rules for the sale or transfer of customer bases; therefore, customers will be given full notice that their current services will be provided by TNCI after the Transaction is completed, and that there will be no change in the quality or cost of their services as a result of the Transaction.

REQUEST FOR WAIVER OF DISCONTINUANCE RULES

13. The Applicants respectfully request that the Commission grant a waiver of A.A.C. R14-2-1107, which governs a telecommunications company's discontinuance of competitive local exchange or interexchange services in the state. Applicants do not believe that the discontinuance rule applies to this proceeding because it involves the purchase of Pac-West's assets (i.e., its customers) by TNCI; therefore, service to the acquired customers is not being discontinued.⁵ Current Pac-West customers will receive at least 30 days' notice of the Transaction as required by the FCC's customer migration rules. It would be confusing for customers to *also* receive a notice regarding a Pac-West discontinuance of service or for the planned customer transfer notice to include a discussion regarding a discontinuance since no affected customer will be discontinued as a result of the Transaction. See Decision No. 70706 (waiving discontinuance rules in transfer of control case).

14. In the event that the Commission does not believe that a waiver of the rule in its entirety is appropriate, the Applicants request that the Commission grant a waiver of A.A.C. R14-2-1107(B), which requires a telecommunications company providing competitive local exchange or interexchange service to publish legal notice of an application to discontinue or abandon services in counties affected by the application within 20 days of the application. As stated herein, TNCI will acquire the customer accounts of Pac-West in the state of Arizona, and those customers will continue to receive high-quality telecommunications services at the same rates, terms and

⁵ Commission Staff has previously come to this same conclusion. See Docket No. T-03761A-04-0710, Addendum to Staff Report (Dec. 27, 2004) (stating "Staff does not believe that the transfer of certain customers qualifies as a discontinuance of service or an abandonment of any portion of its service area. Therefore, Staff does not believe that A.A.C. R14-2-1107 applies").

1 conditions as currently provided by Pac-West. Written notice of this Transaction and of the
2 customer base transfer will be provided to Pac-West's Arizona customers via First Class mail at
3 least 30 days prior to the transfer. Published notice to the entire community is therefore
4 unnecessary. The Commission's waiver of R14-2-1107(B) will serve the public interest and
5 Applicants will provide the affected customers with adequate notice of the Transaction.

6 **REQUEST TO CANCEL THE CERTIFICATES AND TARIFFS OF PAC-WEST**

7 15. Following the Transaction, TNCI will hold Pac-West's customer accounts and
8 assume its operations in Arizona pursuant to TNCI's CCN. Therefore, Pac-West requests that,
9 upon notification from the Applicants that the Transaction is complete with regards to Arizona
10 customers and assets, the Commission cancel the CCNs and tariffs of Pac-West.

11 **Staff Recommendations**

12 16. Staff recommends approval of the Application of TNCI to acquire the customers
13 (including the customers' contracts) and certain assets of Pac-West.

14 17. Staff further recommends a waiver of A.A.C. R14-2-1904 et seq. and any other
15 applicable anti-slamming regulations that may be inconsistent with the FCC's rules regarding the
16 transfer of customer bases.

17 18. Staff further recommends a waiver of A.A.C. R14-2-1107, which governs a
18 telecommunications company's discontinuance of competitive local exchange or interexchange
19 services in the state.

20 19. Staff further recommends that upon notification from the Applicants that the
21 Transaction is complete with regards to Arizona customers and assets, the Commission cancel the
22 CC&Ns and tariffs of Pac-West.

23 20. Staff further recommends that the approval of the transfer be conditioned upon
24 Commission approval of TCNI's Application for a CC&N in Docket No. T-20882A-13-0108.
25 Approval of this application should not become effective until the Commission approves TNCI's
26 Application for a CC&N.

27 ...

28 ...

CONCLUSIONS OF LAW

1
2 1. Pac-West Telecomm, Inc. is a public service corporation within the meaning of
3 Article XV of the Arizona Constitution.

4 2. The Commission has jurisdiction over Pac-West Telecomm, Inc. and the subject
5 matter in this filing.

6 3. TNCI Operating Company LLC also is a public service corporation within the
7 meaning of Article XV of the Arizona Constitution.

8 4. The Commission has jurisdiction over TNCI Operating Company LLC and the
9 subject matter in this filing.

10 5. The Commission, having reviewed the filing and Staff's Memorandum dated
11 October 2, 2013, concludes that it is in the public interest to grant approval as proposed and
12 discussed herein.

ORDER

13
14 IT IS THEREFORE ORDERED that the Application of TNCI Operating Company LLC to
15 acquire the customers (including the customers' contracts) and certain assets of Pac-West
16 Telecomm, Inc. be and hereby is approved.

17 IT IS FURTHER ORDERED that the request for a waiver of A.A.C. R14-2-1904 et seq.
18 and any other applicable anti-slamming regulations that may be inconsistent with the FCC's rules
19 regarding the transfer of customer bases be and hereby is approved.

20 IT IS FURTHER ORDERED that the Applicants' request that the Commission grant a
21 waiver of A.A.C. R14-2-1107 be and hereby is approved.

22 IT IS FURTHER ORDERED that the Applicants' request that, upon notification from the
23 Applicants that the Transaction is complete with regards to Arizona customers and assets, the
24 Commission cancel the CC&Ns and tariffs of Pac-West Telecomm, Inc.

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the approval of the transfer shall become effective upon
2 Commission approval of TNCI Operating Company LLC's Application for a CC&N in Docket No.
3 T-20882A-13-0108.

4 IT IS FURTHER ORDERED that within thirty (30) days following the closing of the
5 proposed transaction, TNCI Operating Company LLC inform the Commission by filing an
6 affidavit with Docket Control that transaction-related activities are completed.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8
9 **BY THE ORDER OF THE ARIZONA CORPORATION COMMISSION**

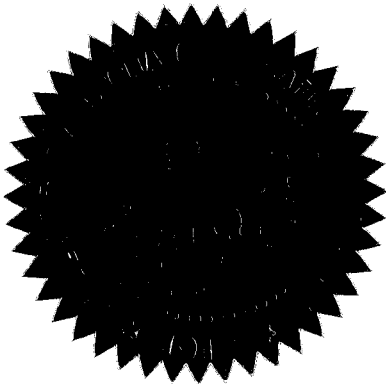
10
11 
12 CHAIRMAN

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12 COMMISSIONER


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15 COMMISSIONER

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14 COMMISSIONER

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15 COMMISSIONER



IN WITNESS WHEREOF, I, JODI JERICH, Executive
Director of the Arizona Corporation Commission, have
hereunto, set my hand and caused the official seal of this
Commission to be affixed at the Capitol, in the City of
Phoenix, this 25th day of October, 2013.

20
21 
22 JODI JERICH
EXECUTIVE DIRECTOR

23 DISSENT: _____

24
25 DISSENT: _____

26 SMO:WMS:sms\MAS
27
28

1 SERVICE LIST FOR: TNCI OPERATING COMPANY LLC AND PAC-WEST TELECOMM, INC.
2 DOCKET NOS. T-20882A-13-0262 and T-03693A-13-0262

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